

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

DAVID LANE JOHNSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE  
PLAYERS ASSOCIATION *et al.*,

Defendants.

No. 1:17-cv-05131 (RJS)

**NFL DEFENDANTS' ANSWER AND DEFENSES  
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants National Football League (“NFL”) and the National Football League Management Council (“NFLMC,” collectively with the NFL, the “NFL Defendants”) answer as follows to the factual allegations set forth in the separately numbered Paragraphs of Plaintiff’s First Amended Complaint and Petition to Vacate Arbitration Award (“Amended Complaint”). The NFL Defendants deny any allegations made in the headings of the Amended Complaint and assert that any allegation in the Amended Complaint that is not expressly admitted below is denied. Further, in its responses below, the NFL Defendants interpret “this District” in the Amended Complaint to refer to the Northern District of Ohio, in which the Amended Complaint was filed.

**PARTIES**

1. The NFL Defendants admit that plaintiff David Lane Johnson is currently employed by the Philadelphia Eagles. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.

2. The NFL Defendants admit that the NFLPA is located at 1133 20th Street, NW, Washington, DC 20036, and that the NFLPA is an employee organization recognized as the exclusive bargaining representative of professional football players employed by National Football League clubs. The remainder of Paragraph 2 constitutes a legal conclusion to which no response is required.

3. The NFL Defendants admit that the NFL is located at 345 Park Avenue, New York, NY 10154, and is an unincorporated association comprised of the 32 employer member clubs. The remainder of Paragraph 3 constitutes a legal conclusion to which no response is required.

4. The NFL Defendants admit that the NFLMC is located at 345 Park Avenue, New York, NY 10154 and is an entity that represents the separately owned and operated 32 professional football member clubs in collective bargaining and labor relations. The remainder of Paragraph 4 constitutes a legal conclusion to which no response is required.

**RELEVANT NON-PARTIES**

5. The NFL Defendants admit and aver that Adolpho Birch, III is the Senior Vice President of Labor Policy & League Affairs. The NFL Defendants deny the remaining allegations in Paragraph 5.

6. The NFL Defendants admit that Carter is an attorney associated with the law firm of WilmerHale and that he is the arbitrator who presided over Johnson's appeal of his discipline imposed pursuant to the 2015 Policy. The NFL Defendants deny the remaining allegations in Paragraph 6.

7. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. The NFL Defendants admit the allegations in Paragraph 8.

**JURISDICTION AND VENUE**

9. The NFL Defendants admit that Plaintiff purports to bring this action under the statutes set forth in Paragraph 9. The remainder of Paragraph 9 constitutes a legal conclusion to which no response is required.

10. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. The NFL Defendants admit that the NFLPA has represented players with respect to discipline under the 2015 Policy. The remaining allegations in Paragraph 11 constitute legal conclusions to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11.

12. Paragraph 12 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 12.

13. The NFL Defendants admit and aver that discipline is imposed pursuant to the 2015 Policy, and that players within this District have been subject to discipline under the 2015 Policy.

14. The NFL Defendants admit the National Football League Hall of Fame Game occurs in Canton, Ohio but deny that it takes place every year. The remainder of Paragraph 14 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 14.

15. Defendants deny the allegations contained in Paragraph 15.

16.

- a. The NFL Defendants admit that the NFLMC held the Rookie Symposium in Aurora, Ohio at the Bertram Hotel, and deny the remaining allegations in Paragraph 16(a).

- b. The NFL Defendants admit that the NFLMC held the Rookie Symposium in Aurora, Ohio from 2012-2015, and deny the remaining allegations in Paragraph 16(b).
- c. The NFL Defendants admit that the NFLMC required Johnson to attend the 2013 Rookie Symposium that occurred in this District from June 23-June 29, 2013 and deny the remaining allegations in Paragraph 16(c).
- d. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(d).
- e. The NFL Defendants admit that they paid for services related to the presentation of materials concerning performance-enhancing substances. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16(e).
- f. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(f).
- g. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(g).
- h. Paragraph 16(h) constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 16(h).
- i. The NFL Defendants admit and aver that Dr. Lombardo served as the Independent Administrator of the 2015 Policy and successor policies. The NFL Defendants deny the remaining allegations in Paragraph 16(i).
- j. The NFL Defendants admit and aver that Dr. Lombardo was paid by the NFLPA and NFLMC to serve as Independent Administrator of the 2015 Policy. Defendants deny the remaining allegations in Paragraph 16(j).
- k. The NFL Defendants admit and aver that, under the 2015 Policy, Lombardo was available for consultation by players, including Johnson. The NFL Defendants deny the allegations in Paragraph 16(k).
- l. The NFL Defendants admit and aver that discipline is imposed pursuant to the 2015 Policy, and that players within this District have been subject to discipline under the 2015 Policy and certain of its predecessor policies.
- m. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(m).
- n. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(n).

- o. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(o).
- p. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(p).
- q. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(q).
- r. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 16(r).
- s. Paragraph 16(s) constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 16(s).
- t. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(t).
- u. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(u).
- v. The NFL Defendants admit and aver that Arbitrator Carter held a telephonic discovery hearing on September 22, 2016. Defendants deny the remaining allegations in Paragraph 16(v).
- w. The NFL Defendants deny the allegation in Paragraph 16(w).
- x. The NFL Defendants deny that the September 22, 2016 hearing occurred in the Northern District of Ohio, and deny knowledge or information sufficient to form a belief as to the truth of remainder of the allegations in Paragraph 16(x).
- y. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(y).
- z. The NFL Defendants admit that the NFLMC ordered a copy of the transcript of the September 22, 2016 hearing transcript, that the transcript indicated that the court reporter transcribed the hearing in Cleveland, Ohio and that they did not object to the court reporter indicating her own location. Defendants deny that the hearing took place in Ohio.
- aa. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(aa).
- bb. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(bb).

- cc. The NFL Defendants admit and aver that it paid the court reporter for the September 22, 2016 transcript, and deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 16(cc).
- dd. Paragraph 16(dd) constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 16(dd).
- ee. Paragraph 16(ee) constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 16(ee).
- ff. The NFL Defendants admit and aver that the NFLMC administered the 2015 Policy and its predecessor policies on players within this District.
- gg. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16(gg).

17. The NFL Defendants admit that Aurora, Ohio is located within the Northern District of Ohio and otherwise deny the remaining allegations in Paragraph 17.

18. Paragraph 18 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 18.

## **FACTS**

### **I. BACKGROUND**

#### **a. Johnson's Terms of Employment**

- 19. The NFL Defendants admit the allegations in Paragraph 19.
- 20. The NFL Defendants admit the allegations in Paragraph 20.
- 21. The NFL Defendants admit and aver that the NFLMC is the sole and exclusive bargaining representative of member clubs of the NFL, and denies the remaining allegations in Paragraph 21.
- 22. The NFL Defendants admit the allegations in Paragraph 22.
- 23. The NFL Defendants admit the allegations in Paragraph 23.

24. The NFL Defendants admit the allegations in Paragraph 24.

25. The NFL Defendants admit and aver that the 2015 Policy was collectively bargained between the NFLMC and NFLPA. The remaining allegations in Paragraph 25 constitute a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 25.

26. The NFL Defendants admit that Section 1 is part of the 2015 Policy. To the extent Paragraph 26 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

27. The NFL Defendants admit that Section 3.1 is part of the 2015 Policy. To the extent Paragraph 27 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

28. The NFL Defendants admit that the language referenced in Paragraph 28 is contained in the 2015 Policy. To the extent Paragraph 28 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

29. The NFL Defendants admit that the information referenced in Paragraph 29 is contained in the 2015 Policy. To the extent Paragraph 29 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

30. The NFL Defendants admit that the information referenced in Paragraph 30 is contained in the 2015 Policy. To the extent Paragraph 30 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

31. The NFL Defendants admit that the information referenced in Paragraph 31 is contained in the 2015 Policy. To the extent Paragraph 31 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

32. The NFL Defendants admit that Section 4.2 is part of the 2015 Policy. To the extent Paragraph 32 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

33. The NFL Defendants admit that the language referenced in Paragraph 33 is contained in the 2015 Policy. To the extent Paragraph 33 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

34. The NFL Defendants admit that the information referenced in Paragraph 34 is contained in the 2015 Policy. To the extent Paragraph 34 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

35. The NFL Defendants admit that the language referenced in Paragraph 35 is contained in the 2015 Policy. To the extent Paragraph 35 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

36. The NFL Defendants admit that Appendix B is part of the 2015 Policy. To the extent Paragraph 36 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

37. The NFL Defendants admit that Section 6 is part of the 2015 Policy. To the extent Paragraph 37 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

38. The NFL Defendants admit that the information referenced in Paragraph 38 is contained in the 2015 Policy. To the extent Paragraph 38 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.



39. The NFL Defendants admit that Sections 9, 10, and 11 are part of the 2015 Policy. To the extent Paragraph 39 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

40. The NFL Defendants admit that the information referenced in Paragraph 40 and its subparts is contained in the 2015 Policy. To the extent Paragraph 40 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

41. The NFL Defendants admit that the language referenced in Paragraph 41 is contained in the 2015 Policy. To the extent Paragraph 41 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

**b. Johnson's 2014 Discipline under the Policy and Placement in the Reasonable Cause Testing Program**

42. The NFL Defendants admit that, on April 23, 2014, Johnson was tested for performance-enhancing substances under the 2015 Policy then in effect. Defendants also admit that Dr. Lombardo sent Mr. Johnson a letter dated May 19, 2014 and that the letter was an exhibit at Johnson's arbitration hearing. To the extent Paragraph 42 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

43. The NFL Defendants admit that Lombardo sent Birch a letter dated July 1, 2014, that Birch sent Johnson a letter on July 15, 2014, and that Lombardo's July 1, 2014 was an exhibit at Johnson's arbitration hearing. To the extent Paragraph 43 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

44. The NFL Defendants admit that Johnson served a four-game suspension during the first four regular season games of the 2014 NFL season, and deny the remaining allegations in Paragraph 44.

45. The NFL Defendants admit that May 19, 2014 through July 11, 2016 is a period of more than two calendar years, and deny the remaining allegations in Paragraph 45.

46. Paragraph 46 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 46.

**c. Johnson's 2016 Testing and Discipline Under the 2015 Policy**

47. The NFL Defendants admit that Johnson provided a urine sample on July 12, 2016 after being instructed to do so by Lombardo, but deny that this was more than two years after Johnson was placed in the reasonable cause testing program. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 47.

48. The NFL Defendants admit that Lombardo sent Johnson a letter dated July 28, 2016. To the extent Paragraph 48 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

49. The NFL Defendants admit that there was a communication between Johnson and Lombardo. To the extent Paragraph 49 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The remaining allegations in Paragraph 49 constitute a legal conclusion to which no response is required.

50. The NFL Defendants admit that there was a communication between Levine and Lombardo. To the extent Paragraph 50 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

51. The NFL Defendants deny that the NFLMC instructed Lombardo to deny Levine's request. The NFL Defendants admit there was a communication between Lombardo and Levine. To the extent Paragraph 51 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

52. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52. To the extent Paragraph 52 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

53. The NFL Defendants admit the allegations in Paragraph 53.

54. The NFL Defendants deny that the NFLMC instructed Butch not to provide Levine with the documents or materials he requested. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 54.

55. The NFL Defendants deny the allegations in Paragraph 55. To the extent Paragraph 55 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

56. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 56, and admit the allegations contained in the second sentence of Paragraph 56. To the extent Paragraph 56 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

**d. Under the 2015 Policy, Johnson Appeals the 2016 Discipline to Arbitration**

57. The NFL Defendants admit that Johnson appealed his suspension by letter dated September 8, 2016. To the extent Paragraph 57 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The remaining allegations in Paragraph 57 constitute a legal conclusion to which no response is required.

58. The NFL Defendants admit that prior to the arbitration hearing, Johnson sought certain information, and deny knowledge or information sufficient form a belief as to the truth of

the allegation that Johnson did so from Ohio. The NFL Defendants deny the remaining allegations in Paragraph 58.

59. The NFL Defendants deny the allegations in Paragraph 59.

60. The NFL Defendants deny the allegations in Paragraph 60.

61. The NFL Defendants admit and aver that the NFL and NFLPA agreed and selected two arbitrators assigned to hear appeals at the time of Johnson's arbitration hearing, and deny the remaining allegations in Paragraph 61.

62. The NFL Defendants deny the allegations in Paragraph 62.

63. The NFL Defendants admit that Arbitrator Carter held a discovery call and issued a discovery order, and that the order was incorporated by reference in his Award. The NFL Defendants deny the remaining allegations in Paragraph 63.

64. The NFL Defendants admit that Arbitrator Carter issued a clarification to the discovery order. To the extent Paragraph 64 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

65. The NFL Defendants deny the allegations in Paragraph 65.

66. The NFL Defendants admit the allegations in Paragraph 66.

67. The NFL Defendants admit the allegations in Paragraph 67, and aver that the written decision attached as Exhibit B is a redacted version of the Award.

68. The NFL Defendants admit the allegations in Paragraph 68.

## **II. THE NFL BREACHED ITS DUTIES UNDER THE COLLECTIVELY BARGAINED 2015 POLICY**

### **a. The NFLMC Disciplined Johnson Based on an Illegitimate Test Prohibited by the Express Terms of the 2015 Policy**

69. The NFL Defendants admit that the information referenced in Paragraph 69 is contained in the 2015 Policy. To the extent Paragraph 69 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

70. The NFL Defendants admit that the information referenced in Paragraph 70 is contained in the 2015 Policy. To the extent Paragraph 70 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

71. The NFL Defendants admit that Lombardo sent Johnson a letter dated May 19, 2014. To the extent Paragraph 71 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 71.

72. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72.

73. Defendants admit that May 18, 2016 is or is about two years from May 19, 2014.

74. The NFL Defendants admit that Lombardo sent Birch a letter dated July 1, 2014. To the extent Paragraph 74 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 74.

75. Defendants admit that June 30, 2016 is or is about two years from July 1, 2014.

76. The NFL Defendants admit and aver that Johnson was subject to reasonable cause testing for the 2014-2015 and 2015-2016 seasons. The NFL Defendants deny that, under the 2015 Policy, the 2015-2016 NFL season concluded the day after the 2016 Super Bowl.

77. The NFL Defendants deny the allegations in Paragraph 77.

78. The NFL Defendants admit that Section 3.1 is part of the 2015 Policy. To the extent Paragraph 78 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 78.

79. The NFL Defendants deny the allegations in Paragraph 79. To the extent Paragraph 79 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

80. Paragraph 80 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 80.

81. Paragraph 81 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 81.

**b. The NFLMC Exerted Undue Control and Influence over the Independent Administrator**

82. The NFL Defendants admit that Section 2.1 is part of the 2015 Policy, and that Lombardo was the Independent Administrator under the 2015 Policy. To the extent Paragraph 82 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 82 of the Complaint.

83. The NFL Defendants admit that Section 2.1 is part of the 2015 Policy. To the extent Paragraph 83 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

84. The NFL Defendants deny the allegations in Paragraph 84.

85. The NFL Defendants admit the allegations in Paragraph 85.

86. The NFL Defendants admit that Lombardo communicated with Johnson on September 15, 2016, copying the NFLMC but not copying anyone from the NFLPA. To the extent Paragraph 86 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The NFL Defendants further admit and aver that when a player's case is on appeal, as was the case with Johnson, information requests from players are directed to the NFLMC.

87. To the extent Paragraph 87 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

88. The NFL Defendants admit that the information referenced in Paragraph 88 is contained in the 2015 Policy. To the extent Paragraph 88 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

89. The NFL Defendants admit and aver that they objected to Johnson's requests to Lombardo. To the extent Paragraph 89 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents.

90. The NFL Defendants admit that the information referenced in Paragraph 90 is contained in the 2015 Policy. To the extent Paragraph 90 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

91. The NFL Defendants deny the allegations in Paragraph 91.

92. The NFL Defendants admit that a discovery call before Arbitrator Carter took place. To the extent Paragraph 92 purports to quote or describe the discovery call, the NFL Defendants refer to the transcript of the discovery call.

93. The NFL Defendants admit that Arbitrator Carter issued an order regarding Johnson's document requests. To the extent Paragraph 93 purports to quote or describe the discovery order, the NFL Defendants refer to the discovery order.

94. Paragraph 94 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 94.

**c. The NFLMC and NFLPA Colluded to Divest Players of the Protections of the Chief Forensic Toxicologist**

95. The NFL Defendants admit that Section 2.2 is part of the 2015 Policy. To the extent Paragraph 95 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

96. The NFL Defendants admit that Section 2.2 is part of the 2015 Policy. To the extent Paragraph 96 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

97. The NFL Defendants admit that Finkle retired as CFT approximately one year before Johnson's July 2016 test, but deny the remaining allegations in Paragraph 97.

98. The NFL Defendants deny the allegations in the first sentence in Paragraph 98. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 98.

99. The NFL Defendants deny the allegations in the first sentence in Paragraph 99. The remaining allegations in Paragraph 99 constitute a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the remaining allegations in Paragraph 99.

**d. In Violation of the 2015 Policy, the NFLMC Prohibited Johnson's Observing Toxicologist from Effectively Observing the Testing of Johnson's "B" Sample**



100. The NFL Defendants admit that the “B” sample analysis occurred on August 19, 2016, and that Section 4.2 is part of the 2015 Policy. To the extent Paragraph 100 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 100.

101. The NFL Defendants admit there were communications between Lombardo and Levine. To the extent Paragraph 101 purports to quote or describe documents, the NFL Defendants refer to those documents for a description of their contents. The NFL Defendants deny that the NFLMC directed Lombardo to deny Levine’s requests.

102. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 102. The NFL Defendants deny the remaining allegations in Paragraph 102.

103. Defendants deny the allegations in Paragraph 103.

**e. The NFLMC Denied Johnson Documents Relevant and Necessary to his Appeal and Committed a Fraud on the Arbitrator**

104. The NFL Defendants admit and aver that Johnson submitted document requests to the NFLMC. To the extent Paragraph 104 purports to quote or describe the document requests, the NFL Defendants refer to that document for a description of its contents.

105. The NFL Defendants admit the allegations in Paragraph 105.

106. The NFL Defendants admit that the NFL Defendants responded to Johnson’s discovery requests on September 20, 2016. To the extent Paragraph 106 purports to quote or describe the response, the NFL Defendants refer to that document for a description of its contents.

107. The NFL Defendants deny the allegations in Paragraph 107.

108. The NFL Defendants deny the allegations in Paragraph 108.

109. The NFL Defendants deny the allegations in Paragraph 109.

110. The NFL Defendants deny the allegations in Paragraph 110.

### **III. THE NFLPA BREACHED ITS DUTY OF FAIR REPRESENTATION**

#### **a. The NFLPA Entered into Side Agreements Not Ratified by its Members, as Required by the NFLPA Constitution**

111. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111.

112. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112.

113. To the extent Paragraph 113 purports to quote or describe the NFLPA Constitution, the NFL Defendants refer to that document for a description of its contents.

114. To the extent Paragraph 114 purports to quote or describe the NFLPA Constitution, the NFL Defendants refer to that document for a description of its contents.

115. Paragraph 115 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 115.

116. Paragraph 116 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 116.

117. Paragraph 117 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 117.

118. Paragraph 118 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 118.

119. Paragraph 119 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 119.

120. Paragraph 120 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 120.

121. Paragraph 121 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 121.

122. Paragraph 122 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 122.

**b. The NFLPA's Public Dispute with Johnson over the Poor Quality of its Representation Motivated its Bad Faith, Arbitrary, and Capricious Actions**

123. The NFL Defendants admit that on or around August 13, 2016, ESPN published an article about Johnson. To the extent Paragraph 123 purports to quote or describe the article, the NFL Defendants refer to that document for a description of its contents.

124. The NFL Defendants admit that on or around August 15, 2016, Philly.com published an article about Johnson. To the extent Paragraph 124 purports to quote or describe the article, the NFL Defendants refer to that document for a description of its contents.

125. The NFL Defendants admit that on or around August 13, 2016, ESPN published an article about Johnson. To the extent Paragraph 125 purports to quote or describe the article, the NFL Defendants refer to that document for a description of its contents.

126. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126.

**c. The NFLPA Misled Johnson as to its Dealings with the NFLMC, Failed to Assist Johnson, and Actively Obstructed Johnson's Efforts to Obtain Information for his Appeal**

127. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127.

128. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128.

129. The NFL Defendants admit that the NFLMC emailed the NFLPA on September 9, 2016. To the extent Paragraph 129 purports to quote or describe the communication, the NFL Defendants refer to that document for a description of its contents.

130. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 130.

131. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131.

132. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 132.

133. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133.

134. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 134.

135. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 135.

136. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136.

137. In response, on September 21, 2016 the NFLPA attorneys stated that the NFLPA had already provided Johnson with all of the information that it was “permitted to provide once an appeal has commenced.” The NFLPA attorneys further directed Johnson that all discovery

requests should be made to the NFLMC and that the NFLPA would not provide him with information.

138. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138.

139. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139.

140. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 140.

141. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141.

142. The NFL Defendants admit and aver that two NFLPA attorneys attended the arbitration hearing in person and that one NFLPA attorney attended the arbitration hearing telephonically. To the extent Paragraph 142 purports to quote or describe the arbitration hearing, the NFL Defendants refer to the hearing transcript for a description of its contents.

143. Paragraph 143 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 143.

144. Paragraph 144 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 144.

#### **IV. SUBSTANTIVE AND PROCEDURAL DEFECTS IN THE ARBITRATION PROCEEDINGS UNDERMINE THE LEGITIMACY OF THE AWARD**

##### **a. The NFLMC and the NFLPA Disregarded the Arbitrator Selection Procedures in the 2015**

145. The NFL Defendants admit that the information referenced in Paragraph 145 is contained in the 2015 Policy. To the extent Paragraph 145 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

146. The NFL Defendants admit that, at the time of Johnson's arbitration hearing, the NFL and NFLPA agreed that two arbitrators were appointed to hear appeals under the 2015 Policy. To the extent Paragraph 146 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 146.

147. The NFL Defendants admit the allegations in Paragraph 147.

148. The NFL Defendants admit that the NFLMC communicated with Johnson on September 20, 2016. To the extent Paragraph 148 purports to quote or describe the communication, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 148.

149. The NFL Defendants admit and aver that they communicated with Wong regarding scheduling and that the NFLPA was copied on those communications. The NFL Defendants deny the remaining allegations in Paragraph 149.

150. The NFL Defendants deny the allegations in Paragraph 150.

151. The NFL Defendants deny the allegations in Paragraph 151.

152. Paragraph 152 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 152.

153. Paragraph 153 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 153.

**b. Carter Disregarded the Pre-Hearing Discovery Provisions of the 2015 Policy**

154. The NFL Defendants admit that Section 11 is part of the 2015 Policy. To the extent Paragraph 154 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

155. The NFL Defendants admit that Section 11 is part of the 2015 Policy. To the extent Paragraph 155 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

156. The NFL Defendants admit that Section 11 is part of the 2015 Policy. To the extent Paragraph 156 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

157. The NFL Defendants admit that Johnson submitted initial discovery requests to the NFLMC on September 16, 2016.

158. The NFL Defendants admit that the NFL Defendants responded to Johnson's discovery requests on September 20, 2016. To the extent Paragraph 158 purports to quote or describe the response, the NFL Defendants refer to that document for a description of its contents.

159. The NFL Defendants admit that the NFL Defendants responded to Johnson's discovery requests on September 20, 2016. To the extent Paragraph 159 purports to quote or describe the response, the NFL Defendants refer to that document for a description of its contents.

160. The NFL Defendants admit the allegations in Paragraph 160.

161. The NFL Defendants admit that, on September 26, 2016, Arbitrator Carter issued a ruling on the discovery hearing. To the extent Paragraph 161 purports to quote or describe the ruling, the NFL Defendants refer to that document for a description of its contents. The remainder of Paragraph 161 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the remaining allegations in Paragraph 161.

162. The NFL Defendants admit that Arbitrator Carter clarified the discovery order on September 30, 2016. To the extent Paragraph 162 purports to quote or describe discovery order, the NFL Defendants refer to that document for a description of its contents.

163. The NFL Defendants admit and aver that the NFLMC communicated to Arbitrator Carter regarding the production of laboratory protocols on September 30, 2016. To the extent Paragraph 163 purports to quote or describe the communication, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 163.

164. The NFL Defendants admit that Lombardo testified at Johnson's arbitration hearing on October 4, 2016. To the extent Paragraph 164 purports to quote or describe the testimony, the NFL Defendants refer to that document for a description of its contents.

**c. Carter Disregarded the Burden Shifting Paradigm in the 2015 Policy**

165. Defendants admit that Johnson's arbitration was held before Arbitrator Carter on October 4, 2016. The remainder of Paragraph 165 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the remaining allegations in Paragraph 165.

166. The NFL Defendants admit that Section 11 is part of the 2015 Policy. To the extent Paragraph 166 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

167. The NFL Defendants deny that, on September 30, 2016, the NFLMC submitted 12 exhibits on which the NFLMC intended to rely during the arbitration hearing and aver that the NFLMC submitted 6 additional exhibits on September 30, 2016.



168. The NFL Defendants admit that the NFLMC submitted an “Exhibit I.” To the extent Paragraph 168 purports to quote or describe the document, the NFL Defendants refer to that document for a description of its contents.

169. The NFL Defendants admit that Arbitrator Carter issued a ruling on Johnson’s document requests. To the extent Paragraph 169 purports to quote or describe the ruling, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 169.

170. The NFL Defendants admit that Arbitrator Carter admitted Exhibit I at Johnson’s arbitration hearing, and that Johnson objected to the admission of Exhibit I. To the extent Paragraph 170 purports to quote or describe the testimony at the arbitration hearing or Arbitrator Carter’s discovery ruling, the NFL Defendants refer to those documents for a description of their contents.

171. To the extent Paragraph 171 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents. The remainder of Paragraph 171 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the remaining allegations in Paragraph 171.

172. Paragraph 172 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 172.

173. Paragraph 173 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 173.

**V. CARTER, INCLUDING HIS LAW FIRM WILMERHALE, WAS EVIDENTLY PARTIAL TO THE NFLMC AND CORRUPT**

174. The NFL Defendants admit that Section 11 is part of the 2015 Policy. To the extent Paragraph 174 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

175. The NFL Defendants admit that Arbitrator Carter was an arbitrator under the NFL Policy and Program on Substances of Abuse, but deny the remaining allegations in Paragraph 175.

176. The NFL Defendants admit the allegations in Paragraph 176.

177. The NFL Defendants deny the allegations in Paragraph 177. To the extent Paragraph 177 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

178. The NFL Defendants admit the allegations in Paragraph 178.

179. The NFL Defendants admit that WilmerHale has represented the NFLMC and certain of the NFL clubs, deny that WilmerHale currently represents the NFLMC and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 179.

180. The NFL Defendants deny the allegations in Paragraph 180.

181. The NFL Defendants admit the allegations in Paragraph 181.

182. The NFL Defendants admit that they retained WilmerHale to investigate an issue related to the Ray Rice domestic violence situation.

183. The NFL Defendants deny the allegations in Paragraph 183.

184. Paragraph 184 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 184.

185. The NFL Defendants admit the allegations in Paragraph 185.

186. The NFL Defendants admit and aver that Robert Mueller of WilmerHale reported to the owners of the NFL clubs Pittsburgh Steelers and New York Giants.

187. The NFL Defendants admit and aver that WilmerHale released its report regarding its investigation into the Ray Rice incident on January 8, 2015.

188. The NFL Defendants admit the allegations in Paragraph 188.

189. The NFL Defendants admit and aver that on June 10, 2015, the NFLMC and NFLPA sent a letter to Arbitrator Carter asking him to serve as an arbitrator for appeals under the 2015 Policy and the Policy and Program on Substances of Abuse. The NFL Defendants admit that Arbitrator Carter was an arbitrator under the 2015 Policy and the Policy and Program on Substances of Abuse at the time of Johnson's arbitration hearing.

190. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 190.

191. Paragraph 191 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 191.

192. Paragraph 192 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 192.

193. The NFL Defendants admit that Arbitrator Carter issued a ruling on Johnson's discovery requests. To the extent Paragraph 193 purports to quote or describe the ruling, the NFL Defendants refer to that document for a description of its contents. The NFL Defendants deny the remaining allegations in Paragraph 193.

194. Paragraph 194 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 194.

195. The NFL Defendants deny the allegations in Paragraph 195.

196. The NFL Defendants deny the allegations in Paragraph 196.

197. The NFL Defendants admit that Arbitrator Carter has published work regarding arbitration. To the extent Paragraph 197 purports to quote or describe the document, the NFL Defendants refer to that document for a description of its contents.

198. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 198.

199. The NFL Defendants deny the allegations in Paragraph 199.

200. The NFL Defendants deny the allegations in Paragraph 200.

201. Paragraph 201 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 201.

### **FIRST CAUSE OF ACTION**

#### **Vacatur of the Award pursuant to the LMRA § 301 Because it Fails to Draw its Essence from the Agreement**

202. Defendants repeat and incorporate by reference their responses to Paragraphs 1-201 as if fully set forth herein.

203. Paragraph 203 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 203.

204. Paragraph 204 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 204.

205. Paragraph 205 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 205.

206. Paragraph 206 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 206.

207. Paragraph 207 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 207.

208. Paragraph 208 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 208.

209. Paragraph 209 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 209.

210. Paragraph 210 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 210.

### **SECOND CAUSE OF ACTION**

#### **Vacatur of the Award pursuant to the LMRA § 301 Because the Arbitration Process was Fundamentally Unfair**

211. NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-210 as if fully set forth herein.

212. The NFL Defendants deny the allegations contained in Paragraph 212 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 212 as they relate to the NFLPA.

213. The NFL Defendants deny the allegations contained in Paragraph 213 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 213 as they relate to the NFLPA.

214. The NFL Defendants deny the allegations contained in Paragraph 214 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 214 as they relate to the NFLPA.

215. The NFL Defendants deny the allegations contained in Paragraph 215 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 215 as they relate to the NFLPA.

216. The NFL Defendants deny the allegations contained in Paragraph 216 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 216 as they relate to the NFLPA.

217. The NFL Defendants deny the allegations in Paragraph 217.

218. The NFL Defendants deny the allegations in Paragraph 218.

219. Paragraph 219 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 219.

220. Paragraph 220 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 220.

221. Paragraph 221 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 221.

222. Paragraph 222 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 222.

### **THIRD CAUSE OF ACTION**

#### **Vacatur of the Award pursuant to the FAA § 10(a)(1) Because the Award Was Procured by the NFLMC and the NFLPA through Corruption, Fraud, or Undue Means**

223. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-222 as if fully set forth herein.

224. The NFL Defendants deny the allegations in Paragraph 224.

225. The NFL Defendants deny the allegations in Paragraph 225.

226. The NFL Defendants deny the allegations in Paragraph 226.

227. The NFL Defendants deny the allegations in Paragraph 227.

228. The NFL Defendants deny the allegations in Paragraph 228.

229. The NFL Defendants deny the allegations in Paragraph 229.

230. Paragraph 230 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 230.

231. Paragraph 231 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 231.

232. Paragraph 232 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 232.

#### **FOURTH CAUSE OF ACTION**

##### **Vacatur of the Award pursuant to the FAA § 10(a)(2) Because there was Evident Partiality or Corruption in the Arbitrator**

233. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-232 as if fully set forth herein.

234. Paragraph 234 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 234.

235. The NFL Defendants deny the allegations in the first sentence of Paragraph 235. The second sentence of Paragraph 235 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 235.

236. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 236. The second sentence of Paragraph 236 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 236.

237. Paragraph 237 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 237.

238. Paragraph 238 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 238.

239. Paragraph 239 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 239.

240. Paragraph 240 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 240.

241. Paragraph 241 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 241.

242. Paragraph 242 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 242.

243. Paragraph 243 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 243.

244. Paragraph 244 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 244.

#### **FIFTH CAUSE OF ACTION**

##### **Vacatur of the Award pursuant to the FAA § 10(a)(3) Because of Arbitrator Misconduct in Refusing to Hear Evidence Pertinent and Material to the Controversy and Other Misbehavior by which Johnson's Rights Were Prejudiced**

245. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-244 as if fully set forth herein.

246. Paragraph 246 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 246.



247. Paragraph 247 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 247.

248. The NFL Defendants admit that Arbitrator Carter ruled on the request referenced in Paragraph 248. To the extent Paragraph 248 purports to quote or describe the discovery ruling or hearing transcript, the NFL Defendants refer to those documents for a description of their contents.

249. The NFL Defendants admit that Arbitrator Carter ruled on the request referenced in Paragraph 249. To the extent Paragraph 249 purports to quote or describe the ruling, the NFL Defendants refer to the hearing transcript for a description of its contents. Paragraph 249 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 249.

250. Paragraph 250 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 250.

251. Paragraph 251 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 251.

252. Paragraph 252 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 252.

### **SIXTH CAUSE OF ACTION**

#### **Vacatur of the Award pursuant to the FAA § 10(a)(4) Because the Arbitrator Exceeded His Authority under the 2015 Policy**

253. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-252 as if fully set forth herein.

254. Paragraph 254 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 254.

255. Paragraph 255 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 255.

256. Paragraph 256 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 256.

257. Paragraph 257 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 257.

258. Paragraph 258 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 258.

259. Paragraph 259 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 259.

260. Paragraph 260 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 260.

261. The NFL Defendants admit that Arbitrator Carter admitted Exhibit I at Johnson's arbitration hearing. To the extent Paragraph 261 purports to quote or describe the Award, the NFL Defendants refer to that document for a description of its contents. The remaining allegations in Paragraph 261 constitute legal conclusions to which no response is required. To the extent any response is required, the NFL Defendants deny the remaining allegations in Paragraph 261.

262. Paragraph 262 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 262.

263. Paragraph 263 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 263.

#### **SEVENTH CAUSE OF ACTION**

#### **Breach of Contract by the NFLMC pursuant to LMRA § 301**

264. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-263 as if fully set forth herein.

265. Paragraph 265 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 265.

266. Paragraph 266 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 266.

267. Paragraph 267 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 267.

268. Paragraph 268 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 268.

269. Paragraph 269 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 269.

270. Paragraph 270 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 270.

271. Paragraph 271 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 271.

272. Paragraph 272 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 272.

273. Paragraph 273 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 273.

274. Paragraph 274 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 274.

275. Paragraph 275 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 275.

276. Paragraph 276 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 276.

### **EIGHTH CAUSE OF ACTION**

#### **Breach of Duty of Fair Representation by the NFLPA pursuant to the LMRA § 301 and NLRA § 8(b)**

277. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-276 as if fully set forth herein.

278. Paragraph 278 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 278.

279. Paragraph 279 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 279.

280. Paragraph 280 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 280.

281. Paragraph 281 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 281.

282. Paragraph 282 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 282.

283. Paragraph 283 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 283.

284. Paragraph 284 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 284.

285. Paragraph 285 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 285.

286. Paragraph 286 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 286.

287. Paragraph 287 and its subparts constitute legal conclusions to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 287.

288. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 288.

289. Paragraph 289 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 289.

290. Paragraph 290 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 290.

291. The NFL Defendants admit that representatives of the NFLPA attended the September 22, 2016 discovery hearing. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 291.

292. The NFL Defendants deny the allegations in Paragraph 292.

293. The NFL Defendants admit that representatives of the NFLPA attended the October 4, 2016 hearing. The NFL Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 293.

294. The NFL Defendants deny the allegations in Paragraph 294.

295. The NFL Defendants admit that representatives of the NFLPA attended the October 4, 2016 hearing. To the extent Paragraph 295 purports to quote or describe the arbitration hearing, the NFL Defendants refer to the hearing transcript for a description of its contents.

296. Paragraph 296 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 296.

297. Paragraph 297 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 297.

298. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 298.

299. Paragraph 299 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 299.

300. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 300.

301. Paragraph 301 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 301.

302. Paragraph 302 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 302.

303. Paragraph 303 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 303.

**NINTH CAUSE OF ACTION**

**Violations of the LMRDA against the NFLPA**

304. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-303 as if fully set forth herein.

305. Paragraph 305 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 305.

306. The NFL Defendants deny the allegations contained in Paragraph 306 as they pertain to them. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 306 as they relate to the NFLPA.

307. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 307.

308. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 308.

309. Paragraph 309 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 309.

310. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 310.

311. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 311. The NFL Defendants admit and aver that they did not produce any side agreements to the 2015 Policy to Johnson.

312. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 312.

313. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 313.

314. Paragraph 314 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 314.

315. Paragraph 315 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 315.

### **TENTH CAUSE OF ACTION**

#### **Breach of Duty of Fair Representation by the NFLPA Pursuant to the LMRA § 301 and NLRA § 8(b)**

316. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-315 as if fully set forth herein.

317. The NFL Defendants admit that on February 6, 2017, the NFLPA filed its Memorandum in Opposition to Plaintiff's Motion to Vacate Arbitration Award ("NFLPA Opposition").

318. To the extent Paragraph 318 purports to quote or describe the NFLPA Opposition, the NFL Defendants refer to that document for a description of its contents.

319. To the extent Paragraph 319 purports to quote or describe the NFLPA Opposition, the NFL Defendants refer to that document for a description of its contents.

320. To the extent Paragraph 320 purports to quote or describe the NFLPA Opposition, the NFL Defendants refer to that document for a description of its contents.

321. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 321.

322. To the extent Paragraph 322 purports to quote or describe the NFLPA Opposition, the NFL Defendants refer to that document for a description of its contents.

323. To the extent Paragraph 323 purports to quote or describe the NFLPA Opposition, the NFL Defendants refer to that document for a description of its contents.



324. Paragraph 324 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 324.

325. To the extent Paragraph 325 purports to quote or describe the arbitration proceedings, the NFL Defendants refer to the discovery and hearing transcripts for a description of their contents.

326. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 326. To the extent Paragraph 326 purports to quote or describe a document, the NFL Defendants refer to that document for a description of its contents.

327. The NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 327.

328. Paragraph 328 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 328.

329. Paragraph 329 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 329.

330. Paragraph 330 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 330.

331. Paragraph 331 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 331.

332. Paragraph 332 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 332.

### **ELEVENTH CAUSE OF ACTION**

#### **Request for Declaratory Judgment under 28 U.S.C. § 2201**

333. The NFL Defendants repeat and incorporate by reference their responses to Paragraphs 1-332 as if fully set forth herein.

334. Paragraph 334 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 334.

335. To the extent Paragraph 335 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

336. To the extent Paragraph 336 purports to quote or describe the 2015 Policy, the NFL Defendants refer to that document for a description of its contents.

337. The NFL Defendants admit and aver that two arbitrators were assigned to hear appeals at the time of Johnson's arbitration hearing.

338. Paragraph 338 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 338.

339. Paragraph 339 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 339.

340. Paragraph 340 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 340.

341. Paragraph 341 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 341.

342. Paragraph 342 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 342.

343. Paragraph 343 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 343.

344. Paragraph 344 constitutes a legal conclusion to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 344.

345. Paragraph 345 and its subparts constitute legal conclusions to which no response is required. To the extent any response is required, the NFL Defendants deny the allegations in Paragraph 345.

### **PRAYER FOR RELIEF**

Defendants deny that plaintiffs are entitled to any judgment or relief from defendants; and specifically deny that plaintiffs are entitled to recover any compensatory, punitive damages, declaratory or injunctive relief against any of the defendants.

### **AFFIRMATIVE DEFENSES**

Without admitting any of the allegations of the Amended Complaint, and without admitting or acknowledging that defendants bear any burden of proof as to any of the allegations, defendants assert the following affirmative defenses. Defendants intend to rely upon any additional defense that become available or apparent during the course of this action, and hereby reserve the right to amend this Answer in order to assert any and all such further defenses.

1. The Amended Complaint fails to state a claim upon which relief can be granted.
2. Johnson's claims cannot arise under the Federal Arbitration Act, 9 U.S.C. § 10, because Johnson's employment is governed by a collective bargaining agreement.
3. Johnson's claims are preempted by section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.
4. Johnson's claims are subject to the exclusive and mandatory arbitration procedures in the collective bargaining agreement.

5. The Award cannot be vacated because it is a final and binding arbitration award that draws its essence from the collective bargaining agreement between the NFL and NFLPA.

6. Johnson's claims are barred, in whole or in part, by the doctrines of waiver, laches, res judicata, collateral estoppel, and the law-of-the-case.

7. Johnson is employed as a professional athlete subject to a collective bargaining agreement, and his testing was consistent with the collective bargaining agreement and collectively-bargained Policy.

8. Johnson failed to take reasonable steps to protect himself from the damage, if any, alleged in the Amended Complaint and failed to mitigate any such alleged damage.

9. Johnson's alleged damages, if any, were not proximately caused by Defendants.

10. Johnson's losses and damages, if any, were caused in whole or in part, or were contributed to, by Johnson's own contributory negligence and/or comparative negligence and/or comparative fault to a degree sufficient to bar or substantially reduce their claims.

WHEREFORE, the NFL Defendants respectfully request the following relief:

- a. Dismissal of Johnson's Amended Complaint in its entirety, with prejudice;
- b. The costs of this action including attorney fees, costs, and disbursements;
- c. The entry of judgment in favor of the NFL Defendants; and
- d. Such further relief as the Court deems fair and just.

Dated: September 8, 2017  
New York, New York

/s/ Estela Díaz

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